

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:07CR83
	)	
v.	)	
	)	
MARK ALAN MEHNER,	)	ORDER
	)	
Defendant.	)	
_____	)	

This matter came before the Court on June 29, 2009, for hearing on defendant Mark Alan Mehner's appeal from the magistrate judge's order and request for oral argument (Filing No. [113](#)). Mehner seeks an order compelling production of certain grand jury material, investigator's reports and rough notes, recorded statements of witnesses, insurance coverage statements and ex parte orders. Upon review of the appeal, the magistrate judge's order, the defendant's brief, and the arguments of counsel, the Court finds that the magistrate judge should be affirmed.

Mehner seeks production of certain testimony elicited before the grand jury. The defendant specifically requested a transcript of Investigator Loux's testimony. Having failed to request the transcript after Loux testified at the suppression hearing, Mehner is not presently entitled to it. The defendant will be entitled to the grand jury testimony of the government's witnesses after they testify at trial, however. *See generally*

Fed. R. Crim. P. 26.2. At the Court's request, Mr. Wellman has agreed to produce to the defendant, in advance of trial, the grand jury testimony of the government's testifying witnesses, subject to the approval of his superiors at the United States Attorney's office.

Mehner's counsel also moves the Court to order production of all of Investigator Loux's or any other investigator's reports, rough notes, recordings of witness interviews, and for certain insurance coverage statements. Mehner states that certain of the records already produced reference other material that has not been produced. However, the government represents that all the information in its file on the criminal case has been produced to Mehner and that there are no reports related to the 2007 writ of entry or forfeiture case. Under these circumstances, based on the representations by the government that it has in fact produced the contents of its files, the Court cannot reasonably order the government to produce what it insists it does not have. In addition, with regard to recordings of witness interviews, counsel for the government advises that it has contacted Investigator Loux who states he did not record any witness interviews related to this investigation. The Court will rely on the representations of those who appear before it unless and until they are shown to be false.

Finally, Mehner seeks an order compelling production of an ex parte order mentioned in one of the reports in this case. Counsel for the government, Mr. Wellman, has agreed to provide the defendant with copies of the motion and the ex parte order and the issue is therefore moot. Accordingly,

IT IS ORDERED that defendant's appeal from the magistrate judge's order and request for oral argument (Filing No. [113](#)) is denied; the magistrate judge's order (Filing No. [112](#)) is affirmed.

DATED this 2nd day of July, 2009.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court